

QUESTIONNAIRE ON THE USE OF IT IN THE OPERATION OF THE SERVICE CONVENTION

PART 1: USE OF IT UNDER THE SERVICE CONVENTION

General

1.1 To what extent is Your State in favour of the use of information technology to facilitate the operation of the Service Convention?

Choose one of the following answers

- Strongly in favour
- Somewhat in favour
- Neutral
- Somewhat against
- Strongly against

Please note responses to this question were provided by Queensland and NSW.

Response from Queensland:

Court Services Queensland (CSQ): Dependent on current capacity or technical capability, under ITC Strategy of future IT capacity to receive and respond electronically to (a) requests for local service of foreign judicial documents, and (b) requests for foreign service of local judicial documents (ie documents issued by the Supreme, District or Magistrates Court in Queensland). This includes capacity to:

1. Electronically receive and send applications requesting service of court documents (including the relevant court documents and any translated documents):
2. Electronically file and deliver, or receive and file certificates of service
3. Electronically accept or remit payment of service fees

Response from NSW: neutral

1.2 Is the transmission by electronic means of requests for service possible under the internal law of Your State?

Choose one of the following answers

- Yes
- No

Please note that responses to this question were provided by Queensland and NSW.

Response from Queensland:

There is nothing legislatively precluding requests for service from being received or transmitted electronically. Such requests are not filed by the Supreme Court Registry, but are recorded in an electronic spreadsheet maintained by the registry.

Response from NSW: Yes. Electronic receipt of the requests for service does not appear to be precluded under any law of New South Wales.

1.3 Is the execution by electronic means of requests for service possible under the internal law of Your State?

Please note that responses to this question were provided by Queensland.

Response from Queensland.

There is nothing legislatively precluding the electronic execution of requests for service. Rule 978A Uniform Civil Procedure Rules 1999 (UCPR) authorises documents to be issued electronically, and states that they must include an image of the court seal. 978A(3) UCPR states that an electronically issued document is valid, even if it does not include a signature. Rule 978A UCPR does not preclude documents issued electronically by the court from being executed by electronic means.

1.4 Is Your State party to any bilateral or multilateral agreements, other than the Service Convention, which provide for the use electronic means in the transmission or execution of requests for service?

Choose one of the following answers

Australia is a party to the following bilateral treaties: Treaty on Judicial Assistance in Civil and Commercial Matters between Australia and the Republic of Korea, and the Agreement on Judicial Assistance in Civil and Commercial Matters and Co-operation in Arbitration between Australia and the Kingdom of Thailand.

Both treaties provide that execution of the request for service of judicial documents shall be effected expeditiously in the manner prescribed by the law of the requested Party or in the manner specifically requested, provided that such manner is not incompatible with the law of the requested Party.

Australia is also a party to bilateral treaties between the UK and other European countries that have been extended to Australia by the UK. These bilateral treaties were concluded in the 1920s and 1930s and many of the countries extended the treaty to their external territories at the time. Such treaties may not prohibit the use of the transmission or execution of requests electronically.

1.5 Has Your State encountered any challenges regarding the use of information technology to facilitate the operation of the Service Convention?

No

1.6 To what extent would Your State be in favour of a common electronic platform to be used by all Contracting Parties in the operation of the Service Convention?

Neutral. Please note this response is based on the response provided by NSW.

1.7 What, if any, particular challenges does Your State envisage in relation to the possible use of a common electronic platform to be used by all Contracting Parties in the operation of the Service Convention?

Please note responses to this question were provided by Queensland.

Response from Queensland:

internal law limitations, judicial or administrative structures, selection of the appropriate technology, system interoperability/compatibility, security concerns.

Queensland's legislation (the UCPR) does not support the electronic execution of sworn or affirmed documents (including affidavits of service) and prescribes that sworn or affirmed documents can only be electronically filed as an imaged document (r975 Uniform Civil Procedure Rules 1999). This will not be an issue (given the certificate of service does not need to be sworn or affirmed and is of itself evidence of service (under r 130UCPR)). However, it may become an issue if the electronic execution of sworn affidavits of service under rule 130P UCPR are contemplated as part of the common electronic platform to be used by Contracting parties.

PART 1: USE OF IT UNDER THE SERVICE CONVENTION (section 2)

Service: Transmission of Requests

1.8 What is the status of the use of information technology in Your State for the transmission of requests for service under the main channel (i.e. to the Central Authority, Art. 5(1)(a))?

Not (yet) under consideration

1.9 What is the status of the use of information technology in Your State for the transmission of requests for service under the alternative channels (Art. 10)?

Not yet under consideration

1.10 What type of electronic transmission does Your State use, or would consider using for requests for service under the main channel?

Distributed ledger technology (DLT): A database held by participants (or nodes) in a decentralised network, where transactions and records are processed, saved and replicated by each node independently and shared with the other nodes, seeking to validate the transaction by achieving consensus on its authenticity. Blockchain is perhaps one of the most well-known of the various forms of DLT.

Check any that apply

Please note responses to this question were provided by Queensland.

Response from Queensland:

Queensland Court Services ICT business unit.

Presumably these would include either secured email, electronic transmission platform administered by a public/state authority or electronic transmission using digital ledger technology

1.11 On average, approximately what percentage of requests for service transmitted electronically by other Contracting Parties does Your State accept?

Unknown

1.12 Since 2014, on average, approximately what percentage of requests for service received by Your State were transmitted electronically by forwarding authorities of other Contracting Parties?

(Please round the estimated percentage down, if applicable)

Choose one of the following answers

0%

1.13 If the Central Authority of Your State has received requests for service transmitted electronically under the Service Convention, on average, what percentage of the documents received are subsequently served electronically?

(Please round the estimated percentage down, if applicable)

Choose one of the following answers

Not applicable

1.14 What is the status of the implementation of an electronic case management system in Your State for incoming and outgoing requests for service issued pursuant to the Service Convention?

***Electronic case management system:** A system that enables casework and related workflows to be followed and managed through electronic communication of information between the individuals concerned (incl. staff, as well as parties and their representatives in some cases).*

Final stages of implementation

1.15 What type of electronic case management system does Your State use, or would consider using for incoming and outgoing requests for service issued pursuant to the Service Convention?

***Electronic case management system:** A system that enables casework and related workflows to be followed and managed through electronic communication of information between the individuals concerned (incl. staff, as well as parties and their representatives in some cases).*

***Distributed ledger technology (DLT):** A database held by participants (or nodes) in a decentralised network, where transactions and records are processed, saved and replicated by each node independently and shared with the other nodes, seeking to validate the transaction by achieving consensus on its authenticity. Blockchain is perhaps one of the most well-known of the various forms of DLT.*

Choose one of the following answers

Other. Please note responses to this question were provided by Queensland.

Response from Queensland:

Supreme Court Registry currently uses an excel spreadsheet. Future system development is occurring under ICT strategy.

Presumably this would include a case management system administered by a public/state authority.

1.16 If Your State uses an electronic case management system for incoming and outgoing requests for service issued pursuant to the Service Convention, which of the following best describes the system?

***Electronic case management system:** A system that enables casework and related workflows to be followed and managed through electronic communication of information between the individuals concerned (incl. staff, as well as parties and their representatives in some cases).*

Choose one of the following answers

Fully electronic system (requests for service stored electronically, electronic display of the progress of the forwarded or received requests for service etc.). Please note the response to this question was provided by the Commonwealth Attorney-General's Department (AGD).

AGD is in the final stages of developing a casework register to record and track progress/finalisation of all service requests sent to AGD as the Australian Central Authority under the relevant Conventions.

PART 1: USE OF IT UNDER THE SERVICE CONVENTION (section 3)

Service: Execution of Requests

1.17 In 2018, on average, approximately what percentage of requests for service received by Your State under the Service Convention led to service being performed/effected using information technology?

(Please round the estimated percentage down, if applicable)

Choose one of the following answers

0%

1.18 When competent authorities of Your State execute requests for service transmitted electronically by another Contracting Party under the Service Convention, in approximately what percentage of instances is the certificate of service then returned electronically to the applicant (Art. 6)?

(Please round the estimated percentage down, if applicable)

Choose one of the following answers

Not applicable

1.19 In 2018, what was the approximate percentage (on average) of requests received by Your State in which the foreign forwarding authority requested service be performed electronically under the Service Convention (Art. 5 (1) b)?

(Please round the estimated percentage down, if applicable)

Choose one of the following answers

0%

1.20 Please indicate whether Your State would accept requests of foreign forwarding authorities seeking service to be performed by each of the following methods (under (Art. 5 (1) b)?

***Distributed ledger technology (DLT):** A database held by participants (or nodes) in a decentralised network, where transactions and records are processed, saved and replicated by each node independently and shared with the other nodes, seeking to validate the transaction by achieving consensus on its authenticity. Blockchain is perhaps one of the most well-known of the various forms of DLT.*

Other (Please specify):

Please note responses to this question were provided by Queensland.

Response from Queensland:

Any request for electronic service under Art 5 (1)(b) Service Convention would be incompatible with the law of Queensland, given 105 UCPR requires personal service of all originating process.

1.21 If Your State refuses requests from other Contracting Parties to use information technology in performing service on your territory, what is/are the main reason/s for such a refusal?

Other. Please note responses to this question were provided by Queensland.

Response from Queensland:

Queensland law, rule 105 UCPR, requires personal service of all originating process

1.22 If Your State performs service electronically, what type of information technology is used?

Distributed ledger technology (DLT): A database held by participants (or nodes) in a decentralised network, where transactions and records are processed, saved and replicated by each node independently and shared with the other nodes, seeking to validate the transaction by achieving consensus on its authenticity. Blockchain is perhaps one of the most well-known of the various forms of DLT.

Check any that apply

Not applicable

1.23 In 2018, what was, on average, the approximate percentage of requests sent by Your State in which your forwarding authority requested service be performed electronically under the Service Convention (Art. 5(1) b))?

(Please round the estimated percentage down, if applicable)

Choose one of the following answers

Not applicable

1.24 If requests for service sent by Your State seeking the use of information technology have been refused by other Contracting Parties, what was/were the main reason/s given for such a refusal?

Other. Please note responses to this question were provided by Queensland.

Response from QLD: N/A

PART 2: STATISTICAL DATA AND OVERALL EFFICIENCY OF THE SERVICE CONVENTION

General Satisfaction

2.1 How does Your State rate the general operation of the Service Convention?

Choose one of the following answers

Satisfactory

Please note that responses to 2.1 were provided by Queensland and NSW.

Response from Queensland:

Processes are served accordingly, despite manual heavy process.

Response from NSW: Satisfactory

Please note responses to 2.3.1 and 2.3.3 were provided by the Commonwealth Attorney-General's Department as the Australian Central Authority. The figures (approx.) provided in 2.3.1 and 2.3.3 only include those requests sent to the Attorney-General's Department (AGD) as the Central Authority. Figures (approx.) provided in 2.3.1 and 2.3.3 do not include service requests sent directly from the Requesting Authority to the Australian Additional Authority. The figures (approx.) provided in 2.3.5 were provided by the Australian Department of Foreign Affairs and Trade (for the years 2017 & 2018), and also from NSW (for the years 2013 to 2018).

Outside of the Service Convention

2.2 Outside the Service Convention, what is the applicable procedure if an interested person from another jurisdiction wishes to perform service on someone located in the territory of Your State?

Check any that apply

Procedure provided by internal law; Procedure provided by bilateral agreement(s); Other procedure (such as consular channels)

2.3 Statistical Data

2.3.1 Service Convention (Main Channel, Art. 5(1))

	Incoming Requests Number (exact or average)	Incoming Requests Average Timeframe for Execution (months)	Incoming Requests Top 3 Forwarding Contracting Parties	Outgoing Requests Number (exact or average)	Outgoing Requests Average Timeframe for Execution (months)	Outgoing Requests Top 3 Requested States
2013	320	4 to 6	(1) France (2) USA (3) China	5	4 to 6	(1) U.K. (2) Netherlands/France/Serbia/USA
2014	278	4 to 6	(1) France (2) China (3) USA	4	4 to 6	Canada, Argentina, Switzerland
2015	334	4 to 6	(1) USA (2) France (3) China	3	4 to 6	China, Turkey, Germany
2016	330	4 to 6	(1) USA (2) France (3) Poland	2	4 to 6	USA, China
2017	362	4 to 6	(1) Vietnam (2) USA (3) France	10	4 to 6	(1) U.K. (2) Germany (3) USA
2018	600	4 to 6	(1) France (2) Vietnam (3) Poland	22	4 to 6	(1) China (2) USA

2.3.2 Internal Law

	Incoming Requests Number (exact or average)	Incoming Requests Average Timeframe for Execution (months)	Incoming Requests Top 3 Forwarding States	Outgoing Requests Number (exact or average)	Outgoing Requests Average Timeframe for Execution (months)	Outgoing Requests Top 3 Requested States
2013						
2014						
2015						
2016						
2017						
2018						

2.3.3 Bilateral Agreement(s)

	Incoming Requests Number (exact or average)	Incoming Requests Average Timeframe for Execution (months)	Incoming Requests Top 3 Forwarding States	Outgoing Requests Number (exact or average)	Outgoing Requests Average Timeframe for Execution (months)	Outgoing Requests Top 3 Requested States
2013	19	4 to 6	(1) S. Korea (2) Thailand	0	4 to 6	(1) S. Korea (2) Thailand
2014	16	4 to 6	(1) S. Korea (2) Thailand	0	4 to 6	(1) S. Korea (2) Thailand
2015	23	4 to 6	(1) S. Korea (2) Thailand	3	4 to 6	(1) S. Korea (2) Thailand
2016	25	4 to 6	(1) S. Korea (2) Thailand	0	4 to 6	(1) S. Korea (2) Thailand
2017	28	4 to 6	(1) S. Korea (2) Thailand	3	4 to 6	(1) S. Korea (2) Thailand
2018	27	4 to 6	(1) S. Korea (2) Thailand	1	4 to 6	(1) S. Korea (2) Thailand

2.3.4 Multilateral Agreement(s) (Other than the HCCH Conventions)

	Incoming Requests Number (exact or average)	Incoming Requests Average Timeframe for Execution (months)	Incoming Requests Top 3 Forwarding States	Outgoing Requests Number (exact or average)	Outgoing Requests Average Timeframe for Execution (months)	Outgoing Requests Top 3 Requested States
2013						
2014						
2015						
2016						
2017						
2018						

2.3.5 Other Procedure (such as consular channels)

	Incoming Requests Number (exact or average)	Incoming Requests Average Timeframe for Execution (months)	Incoming Requests Top 3 Forwarding States	Outgoing Requests Number (exact or average)	Outgoing Requests Average Timeframe for Execution (months)	Outgoing Requests Top 3 Requested States
2013	108 (NSW)	3 (approx.) (NSW)	China/ Turkey/Sri Lanka (NSW)			
2014	79 (NSW)	5 (approx.) (NSW)	China, Turkey (NSW)			
2015	55 (NSW)	4 (approx.) (NSW)	India, Sri Lanka (NSW)			
2016	24 (NSW)	3 (approx.) (NSW)	Turkey, India (NSW)			
2017	124 (DFAT); 52 (NSW)	5 (approx.) (NSW)	Vietnam/Brazil/Austria (DFAT); Turkey/ Croatia (NSW)	5		Singapore/Vanuatu/Taiwan (DFAT)
2018	50 (DFAT); 29 (NSW)	4 (approx.) (NSW)	Vietnam/Brazil/Austria (DFAT); Croatia/India (NSW)	4		(DFAT) Singapore/South Africa/Chile

PART 3: PRACTICAL INFORMATION

Contact details (*the contact details provided in this section will be published on the HCCH website*)

3.1 Is Your State a Contracting Party to the Service Convention?

Choose one of the following answers

Yes

3.2 If Your State is a Contracting Party, are the contact details of the Central and competent Authority(ies) designated by Your State up to date on the Service Section of the HCCH website?

See Conclusion & Recommendation No 4 of the 2014 meeting of Special Commission.

Choose one of the following answers

No

Central Authority/ies: Private International and Commercial Law Section, Australian Government

Address: Attorney-General's Department, Robert Garran Offices, 3-5 National Circuit, BARTON ACT 2600

Telephone: N/A

Fax: N/A

E-mail: PIL@ag.gov.au

General website: www.ag.gov.au/pil

Contact person: The Principal Legal Officer

Languages spoken by staff: English

3.3 If Your State is a Contracting Party have the details of which authority(ies) are competent to forward requests for service under Article 3 been provided?

*See Conclusion & Recommendation No 21 of the 2009 meeting of Special Commission.
Choose one of the following answers*

Yes

3.4 If Your State is a Contracting Party is the practical information chart available on the Service Section of the HCCH website up to date?

*See Conclusion and Recommendation No 4 of the 2014 meeting of Special Commission.
Choose one of the following answers*

Yes